IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12603 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKESHBHAI KULJIBHAI TANK

Versus

MUNICIPAL CORPORATION OF CITY OF SURAT

Appearance:

1. Special Civil Application No. 12603 of 2002

MR RS SANJANWALA for Petitioner No. 1

MR PRASHANT G DESAI for Respondents

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 26/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Rule. Mr.P.G.Desai, learned Counsel waives service of Rule on behalf of the respondents.

2. With the consent of learned Counsel, this petition is finally heard today.

3. In this petition, the petitioner has challenged the order Annexure.A dated 21st December 2002 issued by respondent No.2 and has prayed to restrain the respondents from demolishing any part of the construction standing on Plot No.46-A of Purvi Society (Vibhag-1).

4. The petitioner is the owner of Plot No.46-A of Purvi Society (Vibhag-1) and he has put up construction on the said plot and is using the same for residential purpose. The petitioner was served with a notice dated 28.5.2000, alleging that some part of the construction is unauthorised as the same being in the margin area and called upon the petitioner to show cause as to why the construction should not be removed. On the same day, the petitioner was served with the order or injunction calling upon the petitioner to stop further construction on the plot in question. On 3.7.2002, the above notice was followed by a notice of inspection, inter alia, alleging that the petitioner has not complied with the requisitions made in the earlier notice and calling upon the petitioner to permit entry to the officers of the respondent Corporation. The petitioner, by his representation dated 8.7.2002 to the respondents, inter alia, stated that the construction in question is an old construction and pointed out that renovations are being made. The petitioner in fact made an application on 30th July 2002 for regularisation of unauthorised construction under the Gujarat Regularisation of Unauthorised Development Act, 2001. A further representation dated 16.11.2002 was made by the petitioner setting out all the relevant facts and requesting the authorities to regularise the construction in question. The respondents by communication dated 3.12.2002 called upon the petitioner to submit further details and particulars in connection with the petitioner's application for regularisation which was complied with by the petitioner by his communication dated 11.12.2002. The petitioner was served with the impugned order dated 21.12.2002 purported to have been issued in exercise of the powers conferred by the BPMC Act calling upon the petitioner to remove the construction within three days. The petitioner on 24.12.2002 addressed a detailed

representation to respondent No.2 pointing out the correct facts and reiterating that the construction in question is required to be regularised.

5. This Court, on 31.12.2002, issued notice to the respondents and granted ad-interim relief as prayed for on condition that the petitioner shall file undertaking to remove the additional structure within three days of the disposal of the petition, if the petitioner fails in the petition or if he withdraws the petition.

6. Learned Counsel Mr.Sanjanwala appearing for the petitioner submits that the impugned order records that the petitioner's application for regularisation stands rejected by order dated 3rd December 2002. However, the said communication dated 3rd December 2002 merely calls upon the petitioner to submit further particulars. In the submission of the learned Counsel, the petitioner has not been served with any order, much less, the order dated 3rd December 2002 of the designated authority under the Regularisation Act, rejecting the petitioner's application for regularisation. Learned Counsel, therefore, submits that the petitioner's application for regularisation has not been decided so far and that while passing the impugned order dated 21st December 2002, respondent No.2 has proceeded on false factual premises. Under the circumstances, learned Counsel submits that the petitioner has not been given any opportunity of hearing either by the designated authority or by respondent No.2 before passing the impugned order.

Learned Counsel Mr.P.G.Desai appearing for the respondent Corporation fairly stated that the petitioner has not been served with any order rejecting the petitioner's application for regularisation.

7. We have seen the correspondence produced along with the petition. Perusing the same, it is clear that on 3rd December 2002, vide Annexure.F, the petitioner was called upon to submit further particulars in connection with the petitioner's application for regularisation. Vide letter dated 11.12.2002, at Annexure.G to the petition, the petitioner complied with the above requisitions. However, the respondents, instead of deciding the application of the petitioner, dated 30th July 2002, made under the Act, for regularisation of the unauthorised construction, could not have passed the impugned order dated 21st December 2002 without deciding the same. The impugned order records the fact that the petitioner's application for regularisation stands rejected, by order dated 3rd December 2002, which in our

opinion, is factually not correct. Since the impugned order is passed without giving any opportunity of hearing to the petitioner either by the designated authority or by respondent No.2, the same, in our opinion, is illegal and in violation of the principles of natural justice. We accordingly quash and set aside the order dated 21st December 2002, at Annexure.A to the petition, issued by respondent No.2 and direct the respondents to act in accordance with law. Consequently, we direct the respondents not to insist upon the demolition of any part of the construction standing on Plot No.46-A of Purvi Society (Vibhag-1), in pursuance of the impugned order dated 21st December 2002 till the decision is taken on the application for regularisation dated 30th July 2002 made by the petitioner. Rule is made absolute. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(Sharad D. Dave, J.)

Sreeram.